

S.B. CIVIL WRIT PETITION NO.8015/2007

LRS. of Ranveer Singh and ors.

VS.

Jai Singh Parihar and ors.

Date : 6.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SD Purohit, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order of the trial court dated 4.8.2007 by which petitioners two applications, one under Order 6 Rule 17 CPC and another under Order 8 Rule 1A(3) CPC were dismissed.

The petitioners sought amendment of the written statement with the plea that in the month of July, Radhey Shyam, adopted son of Munim of deceased Shanker Lal, met him and informed that in the month of July, there were heavy rains in Jodhpur and water entered in the underground of said Radhey Shyam and when he removed the goods, he found a will executed by Shanker Lal in favour of Ranveer Singh (present petitioners' ancestor).

when the petitioners came to know about this fact, they submitted an application for amendment of the written statement in the trial court as well as sought permission of the trial court to produce the said will in evidence by moving applications on 25.7.2003 and 8.8.2003.

According to learned counsel for the petitioners, the trial court committed serious error of law in refusing the amendment as well as denying the production of the will in Court for the purpose of receiving it in evidence. The trial court has not assigned any reason for rejecting the application under Order 6 Rule 17 CPC and further declared the will as suspicious document which the trial court could not have done without taking it on record and without giving an opportunity to the petitioners to prove the document and its genuineness. By this, the trial court virtually adjudicated the document without making it a part of the record.

I considered the submissions of learned counsel for the petitioners and perused the facts of the case as well as the reasons assigned by the trial court in the impugned order.

It appears from the reasons given by the trial court in the order itself that the case was fixed for the evidence of the defendant from 11.1.2002. The application under Order 8 Rule 1A(3) CPC was moved on 25.7.2003 and another application under Order 6 Rule 17 CPC was moved on 8.8.2003. The trial court observed that the facts mentioned in the application are not believable.

It will be worthwhile to mention here that the will in question is of the year 1986 and it has been alleged that it was in possession of Pusa Ram, who was Munim of Shanker Lal. When Pusa Ram died is not disclosed. When the document like will, a sensitive document, is coming from the hands of a person who is remotely connected with the executant and the will was not handed over to concerned person even after such long period of 20 years, I do not find that the trial court committed any illegality in passing the impugned order dated 4.8.2007 rejecting the applications under Order 6 Rule 17 CPC and under Order 8 Rule 1A(3) CPC respectively. I do not find the impugned order worth interference in writ jurisdiction under Article 227 of the Constitution of India.

Accordingly, this writ petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya